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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/933,291

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David L. Kinard

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Rupert B. Hurley Jr.
Sealed Air Corporation
P.O. Box 464
Duncan, SC 29334

EXAMINER

PATTERSON, MARC A

ART UNIT

PAPER NUMBER

1794

MAIL DATE

DELIVERY MODE

07/17/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

09/933,291

Applicant(s)

KINARD ET AL.

Examiner

MARC A. PATTERSON

Art Unit

1794

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,5-10 and 13-24 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1,5-10 and 13-24 is/are rejected.
- 7) ☒ Claim(s) 12 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date ____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date ____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: ____.

DETAILED ACTION

1. In view of the decision by the Board of Patent Appeals and Interferences of April 13, 2006, PROSECUTION IS HEREBY REOPENED. A new ground of rejection is set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) initiate a new appeal by filing a notice of appeal under 37 CFR 41.31 followed by an appeal brief under 37 CFR 41.37. The previously paid notice of appeal fee and appeal brief fee can be applied to the new appeal. If, however, the appeal fees set forth in 37 CFR 41.20 have been increased since they were previously paid, then appellant must pay the difference between the increased fees and the amount previously paid.

A Supervisory Patent Examiner (SPE) has approved of reopening prosecution by signing below:

/Gregory L Mills/

Supervisory Patent Examiner, Art Unit 1700

Claim Objections

2. Claim 12 is objected to because of the following informalities: It depends from cancelled claim 11. Appropriate correction is required.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1, 6 – 10, 14 – 18, 21 – 22, are rejected under 35 U.S.C. 103(a) as being unpatentable over Sanfilippo et al. (U.S. Patent No. 6,221,411 B1) in view of Fontenot et al (U.S. Patent Publication No. 2002/0182102).

Regarding claims 1, 6 – 10, 14 – 18, 21 – 22, Sanfilippo et al. teach a meat product, an absorbent pad, a tray, and a lid member over the product and tray sealed under less than 1% oxygen atmosphere as recited in claims 1, 6, 21, 22, (Abstract, column 3, lines 20-45, column 5, line 38 to column 6, line 25). Sanfilippo et al. further teach vacuum packaging, as recited in claims 1, 7, and 22, (column 5, lines 55-62). Sanfilippo et al. also teach it is known to use foam trays as recited in claim 18 (column 1, lines 14-20) Sanfilippo et al. are silent in teaching a particular structure of the absorbent pad as recited in claims 1, 8 – 10, 14 – 17, 21.

Fontenot et al teach a liner (paragraph 0026) for a container (paragraph 0030) for the purpose of absorbing meat juices (paragraph 0083) comprising an upper web comprising a flexible film (paragraph 0050 – 0051; Figure 2), a liquid permeable lower web comprising nonwoven fiber (liquid pervious; paragraph 0058; Figure 2) having a hydrophilic composition thereon (wetting agent comprising a blend of sorbitan monooleate and ethoxylated hydrogenated

castor oil; paragraph 0059), the fiber comprising polyolefin (paragraph 0059) and an absorbent layer between the upper web and the lower web (paragraph 0056; Figure 2); the upper and lower webs therefore extend outward of the absorbent layer; the liner is therefore an absorbent pad; the upper and lower webs are attached to one another around an entire outer perimeter portion of the pad, with the upper and lower webs together surrounding and containing the absorbent layer (the multiple layers of the liner are bonded together along the edge of the liner, with the liquid impervious layer covering the edges of the absorbent material; paragraph 0074). One of ordinary skill in the art would therefore have recognized the advantage of providing for the liner of Fontenot et al in Sanfillipo et al, which comprises a tray, therefore a container, depending on the desired absorption of the end product.

It therefore would have been obvious for one of ordinary skill in the art at the time Applicant's invention was made to have provided for a liner, therefore absorbent pad, taught by Fontenot et al in Sanfillipo et al in order to absorb meat juices as taught by Fontenot.

With regard to Claims 8 – 9, film taught by Fontenot et al comprises nylon (paragraph 0051).

With regard to Claim 10, the film taught by Fontenot et al is water impermeable (impervious; paragraph 0050)

With regard to Claims 14 – 15, the absorbent layer taught by Fontenot et al comprises an absorbent including a paper layer (paragraph 0037) and super absorbent in granular form (the granular form is particles; paragraph 0038)

With regard to Claim 16, the upper and lower webs taught by Fontenot et al are attached with a heat seal (thermal bonding; paragraph 0074).

With regard to Claim 17, the upper and lower webs taught by Fontenot et al are attached adhesively (paragraph 0074).

5. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sanfilippo et al. (US 6,221,411 B1) in view of Fontenot et al (U.S. Patent Publication No. 2002/0182102) and further in view of Wiles (GB 2296905 A).

Sanfilippo et al. and Fontenot et al teach a modified atmosphere of carbon dioxide that has a shelf life of 14 days and a display life (i.e. red in color) for 3 days (column 3, lines 20-45), but is silent in teaching a modified atmosphere of 60-80% oxygen as recited in claim 18.

Wiles teaches an improvement over the type of dual lid packaging (i.e. comprising an oxygen permeable layer under an oxygen impermeable layer) of Sanfilippo et al. and Fontenot et al in that fresh cuts of meats can be stored for about 9 days while the meat remains red in color by providing a 60-80% oxygen mixture in a single lid configuration. Wiles also teaches the type of gas selected depends on the type of meat stored in the package (Abstract. page 4, lines 1-5, page 1, line 13 to page 2, line 17, page 7, lines 4-15, page 9, lines 20-26).

Therefore, it would have been obvious to select a 60-80% oxygen atmosphere since Wiles teaches this type of atmosphere used for red meats this would (1) eliminate the need for two lid layers for red meat packaging and (2) provide an extended "red in color" shelf life for red meats.

6. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sanfilippo et al. (US 6,221,411 B1) in view of Fontenot et al (U.S. Patent Publication No. 2002/0182102) and further in view of Miller et al. (US 4,321,997)

Sanfilippo et al. and Fontenot et al are silent in teaching the absorbing layer includes both wood fluff and a layer of tissue paper.

Miller also teaches an absorbent pad in combination with a meat tray and teaches it is conventionally known to use wood fluff as the absorbent layer and advantageous to combine it with a tissue layer to prevent wood fluff dust from exiting openings in the pad and contaminating the pad (Abstract, column 3, line 50 to column 4, line 20).

Therefore, it would have been obvious to include an absorbent layer with both wood fluff and tissue paper since Miller teaches wood fluff is a known absorber and is preferably combined with tissue paper to prevent wood fluff dust from exiting the pad and contaminating the food.

7. Claims 19 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sanfilippo et al. (US 6,221,411 B1) in view of Fontenot et al (U.S. Patent Publication No. 2002/0182102) and further in view of Bair (US 5,135,787) and LeKhac (US 4,743,244).

Sanfilippo et al. and Fontenot et al teach hydrophobic fibers treated a hydrophilic composition, but are silent in teaching a hydrophilic composition comprising polysorbate, ethyoxylated linear alcohol, fatty amine oxide, alkanolamide, and block copolymers of ethylene oxide or propylene oxide with dimethylsiloxamine that are coupled to polar groups.

Bair also teaches an absorbent pad for a meat package wherein the outer web comprises non-woven polyester fibers with a wetting agent to impart hydrophilic character which include cationic, anionic, nonionic or amphoteric surfactants such that the outer layers expand to contain the super absorbent and better distribute the fluid over the pad to overcome any possible clogging of the pores in the outer web, as well as facilitate sealing (Abstract, column 1, line 49 to column 2, line 6, column 4, lines 45 - column 5, line 2). Blair includes 0.4% of such a wetting agent (Example).

LeKhac teaches enhancing the absorbing characteristics of polymers, which may be used in meat trays by adding a non-ionic surfactant, such as block co-polymers of ethylene oxides, including poly (oxyethylene) as recited in claim 19 (column 5, lines 45 -54, column 6, lines 23-62).

Therefore, it would have been obvious to select any cationic, anionic, nonionic, or amphoteric surfactant, such as nonionic block co-polymers of ethylene oxides, including poly (oxyethylene), for imparting a hydrophilic character to the non-woven polyester-based lower web of Sanfilippo et al. since this would avoid the problem of clogging of the pores that absorb the liquid by allowing the lower web to expand to contain and better distribute the fluid over the pad, in addition to provide a good sealing. It would have been further obvious to select between 0.1 to 10% since Blair teaches 0.4% is sufficient.

8. Claims 23 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sanfilippo et al. (US 6221411 B1) in view of Fontenot et al (U.S. Patent Publication No. 2002/0182102)..

Sanfilippo et al. teach placing both a meat product and an absorbent pad on a tray, placing a lid member over the product and tray, and evacuating the atmosphere from the product and support member as recited in claim 23, wherein a combination of both vacuum and modified atmosphere may be alternatively supplied, which would include supplying a modified atmosphere after evacuation before sealing as recited in claim 24 (Abstract, column 3, lines 20-45, column 5, line 38 to column 6, line 25). Sanfilippo et al. is silent in teaching the particular structure of the absorbent pad 18.

Fontenot et al teach a liner (paragraph 0026) for a container (paragraph 0030) for the purpose of absorbing meat juices (paragraph 0083) comprising an upper web comprising a flexible film (paragraph 0050 – 0051; Figure 2), a liquid permeable lower web comprising nonwoven fiber (liquid pervious; paragraph 0058; Figure 2) having a hydrophilic composition thereon (wetting agent comprising a blend of sorbitan monooleate and ethoxylated hydrogenated castor oil; paragraph 0059), the fiber comprising polyolefin (paragraph 0059) and an absorbent layer between the upper web and the lower web (paragraph 0056; Figure 2); the upper and lower webs therefore extend outward of the absorbent layer; the liner is therefore an absorbent pad; the upper and lower webs are attached to one another around an entire outer perimeter portion of the pad, with the upper and lower webs together surrounding and containing the absorbent layer (the multiple layers of the liner are bonded together along the edge of the liner, with the liquid impervious layer covering the edges of the absorbent material; paragraph 0074). One of ordinary skill in the art would therefore have recognized the advantage of providing for the liner of Fontenot et al in Sanfilippo et al, which comprises a tray, therefore a container, depending on the desired absorption of the end product.

It therefore would have been obvious for one of ordinary skill in the art at the time Applicant's invention was made to have provided for a liner, therefore absorbent pad, taught by Fontenot et al in Sanfillipo et al in order to absorb meat juices as taught by Fontenot et al.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marc A Patterson whose telephone number is 571-272-1497. The examiner can normally be reached on Mon - Fri 8:30 AM - 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye can be reached on 571-272-1498. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Marc A Patterson/
Primary Examiner, Art Unit 1794

/Rena L. Dye/
Supervisory Patent Examiner, Art Unit 1794